

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 IO-10 ISO-00 AID-05 CEA-01 CIAE-00

COME-00 EA-06 FRB-03 INR-07 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

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FM USMISSION OECD PARIS

TO SECSTATE WASH DC 8008

INFO USMISSION GENEVA

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PASS: L FOR FELDMAN, EB/CBA FOR LOCKWOOD, JUSTICE FOR
D. ROSENTHAL, PATENT OFFICE FOR D. HOINKES,
US MISSION GENEVA FOR ROBERT ALLEN

E.O.11652: N/A

TAGS: TGEN, OECD, UNCTAD

SUBJECT: OECD/CST AD HOC POLICY GROUP OF MULTINATIONAL
ENTERPRISES-MEETING OF UNCTAD GROUP B COUNTRIES
TO COORDINATE POSITION ON TRANSFER OF
TECHNOLOGY, JULY 17

REFS: (A) STATE 165331

(B) STATE 152204

1. SUMMARY. MEETING OF AD HOC GROUP WAS SUCCESSFUL,
ACCOMPLISHING OBJECTIVES SET FORTH IN REFTEL (A) IN ONE
DAY. U.S. WILL DRAFT FULL CODE OF CONDUCT AND OTHER
DELEGATIONS WILL DO VARIOUS CRITIQUE PAPERS, ALL TO BE
CIRCULATED BY MID-SEPTEMBER. NEXT MEETING OF AD HOC
GROUP SET WITHIN FRAMEWORK OECD/CST ON OCTOBER 20-21. END SUMMARY.
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2. MEETING OPENED WITH CHAIRMAN DELORME PROPOSING AN AGENDA ALONG LINES SET FORTH IN REFTEL B. FIRST ITEM WAS, THEREFORE, QUESTION OF FLESHING OUT GROUP B PAPER INTO MORE COMPLETE CODE OF CONDUCT. FROM START, IT WAS APPARENT THAT GENERAL CONSENSUS OF VIEWS THAT MARKED GROUP B IN GENEVA WAS STILL PRESENT. (IN ADDITION TO U.S. DEL, A NUMBER OF COUNTRIES HAD DELEGATES WHO WERE AT GENEVA MEETING, INCLUDING GERMANY, AUSTRALIA, CANADA, FRANCE, ITALY, JAPAN, NETHERLANDS, U.K. AND SWITZERLAND.)

3. FIRST ASPECT OF GROUP B PAPER TO BE DISCUSSED WAS THAT OF UNIVERSALITY, RAISED BY SWITZERLAND. THERE WAS GENERAL AGREEMENT THAT A CODE SHOULD BE UNIVERSAL (I.E. APPLY TO ALL INTERNATIONAL TRANSFERS OF TECHNOLOGY, RATHER THAN MERELY THOSE BETWEEN DC'S AND LDC'S). HOWEVER, A CERTAIN NUMBER OF DELEGATES (SWEDEN, FINLAND, NETHERLANDS) NOTED THAT UNIVERSALITY DID NOT EXCLUDE THE POSSIBILITY OF CERTAIN PARTS OF THE CODE BEING DIRECTED TO LDC'S IN PARTICULAR. SWEDEN NOTED THAT IN A VOLUNTARY CODE THE SCOPE FOR SPECIAL LDC TREATMENT IS BROADER THAN IN A BINDING CODE. OTHER DELEGATIONS (IRELAND, JAPAN, SWITZERLAND) NOTED THAT CODE COULD HAVE PROVISIONS TO HELP PROMOTE LDC ABILITY TO INNOVATE TECHNOLOGY, BUT NOT MORE. JAPAN AND CHAIRMAN FELT THAT REFERENCES TO SPECIAL PROBLEMS OF LDC'S COULD BE NOTED IN PREAMBLE, BUT NOT OTHERWISE. U.S. DEL SUGGESTED THAT ISSUE NEED NOT BE RESOLVED AT THIS MEETING, BUT RATHER THE NEXT GROUP B DRAFT CODE BE DRAFTED IN THE BASIS OF UNIVERSALITY IN ORDER TO ACHIEVE GROUP B BASIC POSITION AND THAT SPECIAL TREATMENT FOR LDC'S BE DEALT WITH IN CRITIQUE PAPER AND AT NEXT MEETING OF GROUP B.

4. BINDING OR VOLUNTARY CODE: THERE WAS CONSENSUS THAT CODE SHOULD BE NON-BINDING. IRELAND SUGGESTED AN ARBITRATION PROCEEDINGS NOT CONSISTENT WITH VOLUNTARY NATURE OF CODE, AND AS CODE IS DIRECTED TO GOVERNMENTS AS WELL AS COMPANIES, ARBITRATION NOT LIKELY TO BE ACCEPTED BY DC'S OR LDC'S. RATHER, GROUP B SHOULD STRESS PROVISIONS ALREADY IN GROUP B PAPER THAT THE LIMITED OFFICIAL USE

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PARTIES TO A TRANSFER OF TECHNOLOGY SHOULD FREELY AGREE TO DISPUTE SETTLEMENT ARRANGEMENTS, SUCH AS ARBITRATION PROCEDURES, AND THAT GOVERNMENTS SHOULD TAKE STEPS TO SEE THAT THEIR JUDICIAL SYSTEMS ENFORCE DECISIONS RESULTING FROM SUCH ARRANGEMENTS.

5. SCOPE OF APPLICATION: AUSTRALIA NOTED THAT GROUP B PAPER HAD NO PROVISION CORRESPONDING TO CHAPTER II OF

G-77 PAPER. IT WAS AGREED THAT CRITIQUE PAPER IN THIS SUBJECT WOULD BE DRAFTED. FINLAND ASKED THAT BILATERAL AGREEMENTS FOR TECHNOLOGY ASSISTANCE (AID, RATHER THAN COMMERCIAL-TYPE AGREEMENTS) BE EXCLUDED FROM SCOPE.

6. RESTRICTIVE BUSINESS PRACTICES: U.S. NOTED THAT ONLY A FEW PATENT LICENSE PRACTICES WERE ALWAYS OBJECTIONABLE; OTHERS WERE UNACCEPTABLE ONLY UPON SHOWING OF HARMFUL INTENT AND/OR EFFECT. SWISS ADDED THAT THEY

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PREFERRED EMPHASIS ON AN ABUSE PRINCIPLE.

7. TURNING TO ISSUES RAISED BY G-77 DRAFT, QUESTION OF GUARANTEES IN CHAPTER V OF G-77 WAS NOTED BY AUSTRALIA, WHICH SAID THAT UNCITRAL WAS DEVELOPING A DRAFT MODEL LAW ON SALE OF GOODS, INCLUDING GUARANTEES BY BOTH SELLER AND PURCHASER, AND THAT PERHAPS SOME GUARANTEES

GROUP B COULD LIVE WITH COULD BE FOUND THERE. THE U.K. AGREED THAT THIS WAS WORTH EXAMINING, AND THAT CERTAIN PROVISIONS OF CHAPTER V (I.E. 5.1(V)) COULD BE ACCEPTABLE WITH SUITABLE MODIFICATIONS (SUCH AS ADDING "ON MUTUALLY AGREED TERMS" TO 5.1(V)). U.K. PROMISED TO CIRCULATE CRITIQUE PAPER ON GUARANTEES WHICH IT HAD ALREADY PROPOSED.

8. U.S. DEL STATED THAT CHAPTER III (NATIONAL REGULATION) OF G-77 PAPER MADE NO REFERENCE TO INTERNATIONAL LAW OR SANCTITY OF EITHER TREATIES OR CONTRACTS. ALSO LIMITED OFFICIAL USE

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CHAPTER VIII (APPLICABLE LAW AND SETTLEMENT OF DISPUTES) WAS UNSATISFACTORY.

9. FUTURE WORK: AFTER PRIVATE DISCUSSION WITH U.S. DEL, JAPANESE DELEGATE PROPOSED, AND GROUP B AGREED, THAT THE U.S. DELEGATION SHOULD PREPARE THE FIRST DRAFT OF AN EXPANDED AND, WHERE NECESSARY, ALTERED VERSION OF A GROUP B CODE OF CONDUCT. THIS DOCUMENT IS TO BE CIRCULATED BY SEPTEMBER 20, 1975. IT WAS UNDERSTOOD THAT ANY NATION WISHING TO OFFER SUGGESTIONS WOULD SEND THEM DIRECTLY TO THE U.S. DRAFTSMEN. IN ADDITION, DAVIDOW SPECIFICALLY REQUESTED, AND OBTAINED ASSURANCE OF, THE COOPERATION OF THE EEC IN DRAFTING RELEVANT R.B.P. GUIDELINES.

10. IT WAS ALSO DECIDED THAT VARIOUS NATIONS WOULD COOPERATE IN DRAFTING CRITICAL OR ANALYTIC PAPERS DEALING WITH VARIOUS ISSUES RAISED BY THE G-77 CODE OF CONDUCT. THESE PAPERS WILL PROVIDE BASIS FOR GROUP B POSITION AND ALSO CRITICIZE UNACCEPTABLE G-77 PROVISIONS, AS WELL AS STATING WHAT IS ACCEPTABLE IN G-77 DRAFT, IN ORDER THAT MAXIMUM AMOUNT FROM G-77 CODE BE INCLUDED IN GROUP B CODE. THE FRENCH WILL COORDINATE THIS EFFORT, AND DRAFT A PAPER CRITICIZING THE BREADTH OF THE G-77'S DEFINITION OF THE SCOPE OF THE CONCEPT OF TRANSFER OF TECHNOLOGY (CHAPTER II OF G-77 DRAFT). NETHERLANDS WILL DEAL WITH THE DEMAND FOR SPECIAL TREATMENT FOR DEVELOPING NATIONS. SWITZERLAND WILL ANALYZE THE SUGGESTION THAT THE CODE BE BINDING, AND THE QUESTION OF INCLUSION OF MANDATORY ARBITRATION PROVISIONS IN THE CODE. FRG WILL ANALYZE CHAPTER III (NATIONAL REGULATIONS), DEALING WITH THE ASSERTED POWER OF RECIPIENT STATES, INTER ALIA, TO RENEGOTIATE AND ALTER PRIVATE CONTRACTS WITHOUT REFERENCE TO INTERNATIONAL LAW. THE U.K. WILL EXAMINE THE DEMAND FOR GUARANTEES. JAPAN AND THE U.K. WERE ASKED TO CONTRIBUTE A CRITIQUE OF THE R.B.P. PROPOSALS OF THE 77, AND AGREED TO COORDINATE THEIR EFFORT WITH

THE U.S. ALL THESE PAPERS ARE TO BE FURNISHED TO THE
FRENCH AND U.S. BY SEPTEMBER 15 AT LATEST. AT A SOME-
WHAT LATER DATE, THE AUSTRALIANS AND SWISS WILL CIRCU-
LATE PAPERS SETTING FORTH THEIR RESPECTIVE POSITION
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AS TO WHETHER A CODE SHOULD BE UNIVERSALLY APPLICABLE OR
ONLY RELEVANT TO TRANSFER FROM DEVELOPED TO DEVELOPING
NATIONS. THE NEXT MEETING OF THIS COORDINATING

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COMMITTEE WILL AGAIN TAKE PLACE WITHIN FRAMEWORK OF
OECD/CST, ON OCTOBER 20-21, 1975.

11. COMMENT: BASIC UNANIMITY OF GROUP B ON APPROACH TO CODE WAS VERY HEARTENING. WHILE IT CANNOT BE EXPECTED THAT SAME CONSENSUS WILL BE PRESENT ON ALL PROVISIONS OF EXPANDED CODE, IT MAY WELL BE POSSIBLE, AFTER OCTOBER 20-21 MEETING, TO USE GROUP B CODE IN THE OECD/IME COMMITTEE AS EXAMPLE OF HOW ANY OECD CODE FOR MNC'S SHOULD BE FORMULATED. (TO STRESS GROUP B WORK TO IME BEFORE OCTOBER MEETING MAY ONLY RESULT IN CAPI-TALS REASSESSING THEIR POSITION IN GROUP B, RATHER THAN VICE-VERSA.)

12. CST COMMITTEE HAS PROVEN TO BE Viable FRAMEWORK WITHIN WHICH TO CARRY OUT GROUP B WORK. OECD SECRETARIAT REMAINS FULLY IN BACKGROUND AND DELORME ACTS AS CHAIRMAN OF COMMITTEE. THERE WAS NO ATTEMPT BY ANY LIMITED OFFICIAL USE

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DELEGATION TO RELATE OTHER OECD WORK TO EFFORTS OF GROUP B. IN FACT, DELORME DECIDED NOT TO HAVE GROUP B ANALYZE THE TECHNOLOGY PROVISIONS OF IME CODE OF CONDUCT. ONLY FLY IN OINTMENT WAS THE PRESENCE OF TURKISH DELEGATE IN THE MEETING. HOWEVER, GROUP B DISCUSSIONS IN GENEVA WERE NOT KEPT CONFIDENTIAL, IN ANY EVENT. END COMMENT.
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